

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

BARRY EMMETT,

Plaintiff,

v.

OWEN MURRAY, et al.,

Defendants.

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Case No. 6:24-cv-105-JDK-KNM

**ORDER ADOPTING THE REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

Plaintiff Barry Emmett, a Texas Department of Criminal Justice inmate proceeding pro se, filed this civil rights lawsuit pursuant to 42 U.S.C. § 1983. The complaint purported to name another inmate, Travarus Shead, as a “co-plaintiff,” but Shead did not sign the complaint or the amended complaint and is therefore not a party to this case. The case was referred to United States Magistrate Judge K. Nicole Mitchell for findings of fact, conclusions of law, and recommendations for disposition.


On May 2, 2024, Judge Mitchell issued a Report finding that Plaintiff had accumulated at least three strikes under 28 U.S.C. § 1915(g) before filing this lawsuit and therefore recommending that the Court dismiss this case with prejudice for the purpose of proceeding *in forma pauperis*. Docket No. 13. Judge Mitchell further recommended that the case should proceed if Plaintiff paid the full filing fee within fifteen days of the dismissal order. A copy of this Report was sent to Plaintiff. However, no objections have been received.

This Court reviews the findings and conclusions of the Magistrate Judge de novo only if a party objects within fourteen days of service of the Report and Recommendation. 28 U.S.C. § 636(b)(1). In conducting a de novo review, the Court examines the entire record and makes an independent assessment under the law. *Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (en banc), *superseded on other grounds by statute*, 28 U.S.C. § 636(b)(1) (extending the time to file objections from ten to fourteen days).

Here, Plaintiff did not object in the prescribed period. The Court therefore reviews the Magistrate Judge’s findings for clear error or abuse of discretion and reviews the legal conclusions to determine whether they are contrary to law. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989) (holding that, if no objections to a Magistrate Judge’s Report are filed, the standard of review is “clearly erroneous, abuse of discretion and contrary to law”).

Having reviewed the Magistrate Judge’s Report and the record in this case, the Court finds no clear error or abuse of discretion and no conclusions contrary to law. Accordingly, the Court hereby **ADOPTS** the Report and Recommendation of the United States Magistrate Judge (Docket No. 13) as the findings of this Court. It is therefore **ORDERED** that this case is **DISMISSED** with prejudice for purposes of proceeding *in forma pauperis* under 28 U.S.C. § 1915(g), but without prejudice as to the refiling of his lawsuit without seeking *in forma pauperis* status and payment of the full filing fee.

So **ORDERED** and **SIGNED** this **11th** day of **July, 2024**.



JEREMY D. KERNODLE
UNITED STATES DISTRICT JUDGE